IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1400 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VANKAR CHHAGANBHAI DHULABHAI
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1400 of 1993
MR DR BHATT for Petitioner No. 1-5
MR YU MALIK for Petitioner No. 1-5
Mr.A.J.Desai, learned A.P.P.for Respondent No. 1
2. Criminal Misc.Application No. 645 of 1994

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 13/09/2002

C.A.V. JUDGEMENT
(Per : MR.JUSTICE SHARAD D.DAVE)

1. Out of the total 9 accused, the present 5 accused/appellants have filed this appeal against the judgment and order dated 30.10.93 in Sessions Case no. 53/93 rendered by the Addl.Sessions Judge, Mehsana by which the present appellants were sentenced to rigorous imprisonment for six months for the offence u/s 147 and 148 of the Indian Penal Code, rigorous imprisonment for life for the offence u/s 302 read with Sec. 149 of Indian Penal Code, rigorous imprisonment for 5 years and fine of Rs.200/- for each accused in default simple imprisonment for one month for the offence under sec. 307 read with Sec. 149 of the Indian Penal Code, rigorous imprisonment for three years and fine of Rs.200/- for each accused in default simple imprisonment for one month for the offence under Sec. 326 read with Sec. 149 of the Indian Penal and simple imprisonment for one year for the offence under sec. 323 read with Sec. 149 of the Indian Penal Code. All the sentences were ordered to run concurrently.

2. The prosecution case was that on 20.10.92 at about 8.00 p.m. the present appellants had formed unlawful assembly near Mota vankarvas, Ramji temple in village Ranuaj. As per the case of the complainant P.W. 2 Hargovan Haribhai Vankar, the appellant no.l had a stick, appellant no. 2 was armed with a dagger, appellant no. 3 had a gupti, appellant no. 4 had an axe and appellant no. 5 had a stick and other accused were armed with other weapons. The accused came to the house of P.W. 2 Hargovan Haribhai and used abusive language and gave a stick blow on the head of Hargovanbhai. The appellant no. 2 gave a dagger blow on the chest of Hargovanbhai. When the son of P.W. 2 Mukesh came to save him, the appellant no.2 gave him a blow with a dagger and the appellant no. 3 gave him a gupti blow. It is further alleged that the accused gave stick blows to deceased Ashok and other accused had also inflicted blows with other weapons.

3. It is further the case of the prosecution that all the injured were taken to the Govt. Hospital, Patan and then they were transferred to Ahmedabad Civil Hospital where his nephew Ashok was declared dead and Hargovandas and Mukesh were treated in the hospital. The complainant had lodged F.I.R. at Patan Civil Hospital and after the investigation was over, the chargesheet was filed in the Court of Judicial Magistrate First Class at Patan. As the offence under Sec. 302 I.P.C. is exclusively triable by the Sessions Court, the case was committed to the Sessions Court having jurisdiction at Mehsana.

4. The charge at exh. 17 was framed against the accused on 25.6.93 by the Addl.Sessions Judge, Mehsana for the offences punishable under Sec. 302, 323, 504 read with 147, 148 and 149 I.P.C. and under Sec. 135 of the Bombay Police Act. The charge was read over and explained to the accused wherein they pleaded not guilty and claimed to be tried.

5. The prosecution examined i) P.W.1 Complainant Vankar Lavjibhai Haribhai at exh. 28, ii) P.W.2 Vankar Hargovanbhai Haribhai at exh. 29, iii) P.W.3 Dr.Umeshibhai Hargovanbhai Nayak at exh. 30, iv) P.W.4 Mukeshbhai Hargovanbhai at exh. 35, v) P.W.5 Chamanji Akaji Chauhan at exh. 37, vi) P.W.6 Dr.Surendra Mahendrakumar Sharma at exh. 39, vii) P.W.7 Chamar Saburbhai Kanjibhai at exh. 42, viii) P.W.8 Ramanji Badaji at exh. 44, ix) P.W.9 Vankar Natwarbhai Parmarbhai at exh. 46, x) P.W.10 Rasulbhai Valibhai at exh. 49, xi) P.W.11 Galabji Mafaji at exh. 51, xii) P.W.12 Kamleshkumar Gafurachand Modi at exh. 53, xiii) P.W.13 Rabari Vaghajibhai Jivanbhai at exh. 54, xiv) P.W.14 Sikandarkhan Jalalkhan Sindhi at exh. 55 and xv) P.W.15 V.M.Rajput at exh. 59.

6. The further statement of the accused was recorded under Sec. 313 of the Criminal Procedure Code. The appellant no. 1 (original accused no. 3) had stated that the prosecution witnesses came to his house and had beaten him and when his wife came to save him, she was also beaten and sustained injuries. That village people gathered and in the scuffle the witnesses got injured. The appellant no. 3 (original accused no. 5) had stated in his further statement that as he is suffering from mental disease, he had not played any part in the alleged incident. In his support, the appellant no. 3 had examined Dr.Suresh R Modi at exh. 85, who had produced medical case papers of the appellant at exh. 86. The appellant no. 4 (original accused no. 6) had examined one Hirabhai Dahyabhai Patel at exh. 81 to prove that at the relevant time he was serving in the office of the Asst.Director, Agriculture, Godhra. This witness had produced relevant papers at exh. 82,83 & 84 signed by the authority on the day of the incident.

7. The trial court, on the basis of the material on record, came to the conclusion that on the date of the incident, all the accused had formed unlawful assembly, the common object of the assembly was to commit murder of Ashok with the help of deadly weapons which they were carrying at that time and also caused injuries to the

other witnesses and convicted the appellants under Sections 147, 148, 302 read with 149, 307 read with 149, 326 read with 149 and 323 read with 149 of the Indian Penal Code and sentenced each of the appellants (1) R.I. for six months; (2) R.I. for six months; (3) imprisonment for life (4) R.I. for five years and fine of Rs.200 for each of the appellants in default S.I. for one month, (5) R.I. for three years and fine of Rs.200 for each of the appellants in default S.I. for one month, and (6) S.I. for one year and acquitted rest of the accused against whom the prosecution failed to prove any offence.

8. The learned counsel for the appellants and learned Additional Public Prosecutor has taken us to the record and proceedings of this appeal. It is submitted that even though the statements of the neighbours were recorded, but none of them were examined before the Sessions Court. It is the case of the prosecution that Hansaben w/o Mukesh also suffered injury in the scuffle, however, she has not been examined as prosecution witness. The place of the incident is a thickly populated area, however, the statements of the witnesses residing there about are not recorded nor they have been examined. If we peruse the deposition of complainant Lavjibhai, witness Hargovan and injured Mukesh the incident took place at 8.30 p.m. on 20.10.92 near the house of Hargovan. But they did not state anything about the presence of Rajiben. Therefore there is a doubt of the presence of Rajiben at the place of the incident. As per the complainant Lavjibhai, original accused no. 3 inflicted a stick blow on the head of Hargovind, the appellant no. 2 inflicted a dagger blow, the appellant no. 3 inflicted a gupti blow on the right shoulder of Ashok and when Hansaben fell on him to save him, she was also given stick and kick blows. One of the accused by name Bhikha Amra inflicted an axe blow on the right thigh of the complainant. Witness Hargovindbhai has stated that he is beaten by stick by appellant no. 1 and dagger blow was given by appellant no. 2, appellant no. 3 inflicted a gupti blow to him as well as other dagger blow to Mukesh whereas one accused Khushal Magha inflicted a stick blow and kick to Hansaben. When Mukesh tried to save him, all the accused gave him kick blows. According to the learned counsel for the appellants, if we analyze the deposition of the witnesses more particularly, Mukesh and Hargovindbhai, it is difficult to come to the conclusion that they were given any blow with deadly weapons. It is the say of the witnesses that all the witnesses were attacked one by one by the accused which creates doubt that as per the say of Hansaben she

was given stick blow and kick blows by Khushal Magha whereas the said event is not narrated neither by Hargovindbhai or Mukesh. Therefore, if we peruse the deposition of eye witness as well as injured witness and the fact that the alleged injured Hansaben has not been examined by the prosecution, it creates a doubtful case against all the accused.

9. So far as the presence of the complainant at the place of the incident is concerned, it is the say of the learned counsel for the appellants that the quarrel took place at the house of his brother Hargovindbhai and after hearing some noise, he went to the house of his brother after 2 to 5 minutes. He says that when he went to the house of his brother, he saw not 4 but 7 accused and in examination-in-chief he gave the names of six accused. He further says that when the accused started beating the witnesses one by one, the other witnesses were silent spectators. Nobody tried to save them. This itself shows the unnatural behavior of the complainant and other witnesses. If his brothers and nephews were beaten by the present accused, he would have tried to save them by calling other relatives. While watching the incident he did not try to run or try to call for help of others. As per his say, he was given one blow of blunt portion of axe, however, no blood came out. There is a presumption that when axe blow is given to a person it might be given with the side having sharp edge but it would not be given by the blunt portion. Therefore, his evidence creates doubt regarding the injury caused to him. The witness denied that the incident took place near the house of Govind Ambaram. As per his say, all the three injured were lying in the truck in unconscious condition. He gave the names of the weapons by which he and other relatives were injured but the doctor report does not say regarding this. There are many houses located near the place of the incident, however, none of the inhabitants of those houses have been examined as the independent witness and only those interested and closely related witnesses have been examined. The learned Counsel for the appellants has relied on case of Ram Ashrit and others V/s State of Bihar 1981 Cr.L.J. 484 (S.C.) and submitted that the witnesses in a murder case were either related or otherwise interested in the prosecution, their testimony had to pass the test of close and severe scrutiny before their testimony could be safely acted upon. In the absence of corroboration to a material extent in all material particulars, it was extremely hazardous to convict the accused persons on the basis of the testimony of these highly interested, inimical and partisan witnesses, particularly when it bristles with

improbable versions and material infirmities. He also relied on the judgments of i) State of U.P. V/s Madan Mohan and others reported in AIR 1989 SC 1519, ii) Manzoor V/s State of U.P. and iii) Suleman V/s State of Uttar Pradesh reported in Cr.L.R.(S.C.)1982 134. While going through para 11, it appears that the Hon'ble Apex Court had stated the same principle as stated in case of Ram Ashrit (supra).

10. While concluding the arguments, learned counsel for the accused submitted that the presence of each of the accused is not proved by the prosecution and it has miserably failed to prove the unlawful assembly, whose common object was to cause the murder of deceased Ashok and injuries to the witnesses. It was contended by the learned counsel for the appellants that the muddammal articles recovered from the accused/appellants were not having blood mark which were of the injured/deceased. The learned counsel for the appellants contended that there was no evidence led by the prosecution for the offences under Sec. 302 read with Sec. 114 of the Indian Penal Code. Learned counsel for the appellants further submits that mere presence of assembly or persons does not mean the unlawful assembly unless it is shown by direct evidence that the accused shared common object of the assembly. The prosecution has not led cogent evidence to prove beyond doubt that all the appellants had formed unlawful assembly and also common object of causing murder of the deceased Ashokbhai and caused injury to the witnesses and therefore the appeal be allowed and the conviction and sentence imposed on the appellants by the trial court be quashed and set aside.

11. Learned A.P.P. Mr.A.J.Desai, for the State of Gujarat has tried to support the judgment and order passed by the learned Addl.Sessions Judge, Mehsana, and argued that there was strong motive behind the commission of the crime by the appellants. That there was some dispute with the parties inter-se. It is contended that the prosecution has examined all the eye witnesses present at the place of the incident by which the injured witnesses categorically deposed about the participation of the appellants. There was ample evidence produced by the prosecution and, therefore, the conviction appeal filed by the appellants be dismissed.

12. It is not in dispute that Ashok Hargovanbhai died a homicidal death in the incident which took place on October 20, 1992. The evidence of P.W.3, Dr. Nayak, and the post-mortem notes Exh.34, establish that Ashok Hargovanbhai died a homicidal death due to fatal injuries

sustained by him in his right lung and liver in the incident in question. Therefore, the finding of the learned Additional Sessions Judge that deceased Ashok Hargovanbhai died a homicidal death, deserves to be confirmed.

13. The evidence of P.W.1, Lavjibhai, who is brother of Ashok Hargovanbhai, evidence of P.W.2, Hargovanbhai Haribhai, and the evidence of P.W.4, Mukesh Hargovanbhai show that, on the day of the incident, the appellants duly armed with the weapons had gone to the house of Hargovanbhai. The evidence of eye-witnesses proved beyond doubt that the appellant no.3, Pankaj Alias Prakashbhai Chhaganbhai, had inflicted gupti blow on the right chest. The said blow had penetrated deep and it had caused injuries on the right lung and liver. As per the post-mortem notes Exh.34, deceased Ashok Hargovanbhai had received the following injuries:
[page 84]
"1. Puncture wound on right lateral side of chest on mid axillary line in 10th inter coastal space oblique of 1 cm x 0.5 cm x deep to thoracic cavity direction to upward and midially [cloated blood with surrounding it]

2. Puncture wound of back in right lumbar region of 1 cm x 0.5 cm x cavity deep

3. Two lacerated wound on bicep region and on middle of right arm of 0.5 cm x 0.25 cm each.

4. Two incised wound on back of right arm above elbow joint of 1 cm x 0.5 cm each vertical and parallel to each other."

As per the evidence of P.W.3, Dr. Nayak, external injuries, as noted above, were corresponding to the following internal injuries:
[page 85]
"- Puncture wound of a cm x 0.5 cm in 10th inter coastal space extending into the right thoracic cavity.
- Right pleura is punctured of 1 cm x 0.5 cm wound right plural cavity is full of blood about 700cc

- Puncture wound in media stenium of 0.5 cm x 0.5 cm blood in right plural cavity of about 500 cc

- Puncture wound of 1 cm long on margin of right lower pole of lung plura through & through."

P.W.3, Dr. Nayak, had opined that the external injuries Nos. 1 and 2 were possible by infliction of blows with gupti. He also opined that the blows inflicted with gupti had penetrated in the right portion of the chest and had caused injuries to the right lung and liver, and, as a result of which, there was profusely bleeding which had resulted into death of deceased Ashok Hargovanbhai. The evidence of the eye-witnesses, in our view, proves beyond doubt that appellant No.3, Pankaj alias Prakash Chhaganbhai, had inflicted gupti blows on the deceased Ashok Hargovanbhai which had caused his death. The appellant No.3 had selected vital part of the body of the deceased Ashok Hargovanbhai for inflicting fatal blows with gupti and, furthermore, the appellant No.3 had acted cruelly in giving blows with gupti. There is no manner of doubt that the appellant No.3, Pankaj alias Prakash Chhaganbhai, had knowledge and intention to cause murder of deceased Ashok Hargovanbhai. Therefore, taking into consideration the totality of oral as well as documentary evidence, we are of the opinion that the appellant No.3 was responsible for causing the murder of deceased Ashok Hargovanbhai and he should be held guilty for the offence under Section 302 IPC.

14. Learned Additional Sessions Judge has held that all the appellants had formed unlawful assembly the common object of which was to cause murder of Ashok Hargovanbhai and to cause serious injuries on the injured witnesses who are relatives of Hargovanbhai. The evidence of witnesses examined by the prosecution, in our view, does not prove beyond doubt that the appellants had formed unlawful assembly the common object of which was to cause murder of Ashok Hargovanbhai and to cause fatal injuries to the injured witnesses. It is pertinent to note that, before the incident had taken place, the wife of the appellant No.1, Rajiben, had lodged First Information Report against P.W.4, Mukesh Hargovanbhai, which was produced on the record of the case at Exh.58. As per the contents of the said First Information Report, EXh.58, P.W.4, Mukesh Hargovanbhai, had caused injuries on the complainant, Rajiben, and had abused her husband, appellant No.1, Chhaganbhai Dhulabhai. In the said First Information Report, it was alleged that, P.W.4, Mukesh Hargovanbhai, had caused injuries with sticks on appellant No.1 and her two sons, namely, Ashok Chhaganbhai (appellant No.2) and Prakash Chhaganbhai (appellant No.3). The dispute between the appellants on one side and the complainant on the other side had taken place as the side of the appellants had not accompanied P.W.2, Hargovan Harishbhai, for conveying condolence message. When P.W.2, Hargovan Harishbhai, had gone alone

to condole over the death of his brother-in-law, the appellant No.1 had felt insulted and, therefore, on the day of the incident, he along with other appellants and other accused persons had formed unlawful assembly to take a revenge on P.W.2, Hargovanbhai Harishbhai, and his family members as they wanted to project themselves as the leaders of the community. As noted earlier, because of the dispute which had arisen due to some social problems of the community, both the sides had developed enmity towards each other. It may be noted that the side of the appellants as well as the side of the complainant were residing in the same locality, namely, Vankar Vas at village Ranuaj. The First Information Report Exh.58 lodged by the wife of the appellant No.1, suggests that P.W.4, Mukesh Hargovanbhai, had gone to the house of the appellant No.1 to pick up quarrel and had caused injuries with stick to the appellant No.1 and his two sons, appellants Nos. 2 and 3. It appears that, this was the main cause for the incident which took place on October 20,1992, wherein, deceased Ashok Hargovanbhai, died and other witnesses, namely, P.W.1, LavjibhaiHaribhai, P.W.2, Hargovanbhai Haribhai, and P.W.4, Mukesh Hargovanbhai, sustained serious injuries. The evidence of the injured witnesses, in our view, does not prove beyond doubt that the appellants along with other accused persons had formed unlawful assembly the common object of which was to cause murder of Ashok Hargovanbhai. The accused persons had a grudge against P.W.2, Hargovan Harishbhai, who had gone alone to condole about the death of his brother-in-law and did not wait for the appellant No.1 and other persons to accompany him for the said visit. There was no reason for the appellants to cause murder of deceased Ashok Hargovanbhai. It must be stated that the incident had taken place in a spur of moment and, it appears that, it was not pre-planned. The circumstances emerging from the evidence reveal that it was a free fight between the appellants and the side of the complainant, wherein, deceased Ashok Hargovanbhai had died and other witnesses had sustained serious injuries.

15. In Puran vs. State of Rajasthan, (1976) 1 Supreme Court Cases p.28, it has been held that, when there is sudden fight between the parties, no question of invoking the aid of Section 149 for the purpose of imposing constructive criminal liability on the accused arises. The accused persons could be convicted only for the injuries caused by each of them. In the present case, the appellant No.3, Pankaj alias Prakashbhai Chhaganbhai, had caused fatal injuries on deceased Ashok Hargovanbhai, and, therefore, he can alone be individually liable for causing murder of deceased Ashok

Hargovanbhai. In absence of any evidence produced by the prosecution that all the accused persons had formed unlawful assembly armed with deadly weapons the common object of which was to cause murder of Ashok Hargovanbhai, all the accused persons cannot be held liable for causing murder of deceased Ashok Hargovanbhai by taking the aid of Section 149 of the Indian Penal Code.

16. As per the evidence of P.W.1, complainant, Lavjibhai Haribhai, appellant No.1, and original accused No.3, Chhaganbhai Dhulabhai, was armed with stick, appellant No.2, Ashokbhai Chhaganbhai, was armed with dagger, appellant No.3, Pankaj alias Prakashbhai Chhaganbhai, was armed with gupti, appellant No.4, Bhikhabhai Armabhai, was armed with axe, and appellant No.5, Mohanbhai Madhabhai, was armed with stick. The evidence of P.W.1, Lavjibhai Haribhai, shows that appellant No.1 had inflicted stick blow on the head of P.W.2, Hargovan Haribhai and when P.W.2, Hargovan Haribhai, fell down due to stick blow inflicted by the appellant No.1, the appellant No.2 had inflicted blows with dagger on the chest of P.W.2, Hargovan Haribhai. P.W.2, Hargovan Haribhai, was first treated at General Hospital, Patan, and, thereafter, was referred to the Civil Hospital, Ahmedabad. The injury certificate of P.W.2, Hargovan Haribhai, issued by the Civil Hospital, Ahmedabad, produced at Exh.41, shows that injury No.1, which was CLW about 5 cm to 0.5 cm on the frontal parietal region can be caused by stick whereas stab wound which was injury No.2, can be caused by dagger. P.W.6, Dr. Surendra Mahendrakumar Sharma, who had treated P.W.2, Hargovan Haribhai, at the Civil Hospital, Ahmedabad, deposed that injury No.2 was of serious nature. Dr. Sharma, in his cross examination, had deposed that, while giving the history, P.W.2, Hargovan Haribhai, had not stated how he had sustained injuries. The appellant No.1, Chhaganbhai Dhulabhai, was armed with stick and had caused injury on P.W.2, Hargovan Haribhai, by inflicting stick blows on the left frontal parietal region. Therefore, in our opinion, he can be held responsible for the individual act on his part looking to the injuries sustained by P.W.2, Hargovan Haribhai on the left frontal parietal region. The appellant No.1 can be held guilty of causing grievous hurt to P.W.2, Hargovan Haribhai, which is punishable under Section 326 of the Indian Penal Code. Therefore, the appellant No.1 is convicted under Section 326 of the Indian Penal Code for his individual act. The conviction of appellant No.1 under Sections 147, 148, 302 read with 149, 307 read with 149, 326 read with 149 and 323 read with 149 of the

Indian Penal Code is, therefore, quashed and set aside, and, instead, the appellant No.1 is convicted under Section 326 of the Indian Penal Code.

17. According to the case of the prosecution, the appellant No.2, Ashokbhai Chhaganbhai, had inflicted blow with dagger on the chest of P.W.2, Hargovan Haribhai. As per the evidence of the witnesses of the prosecution, the appellant No.2 had also inflicted blow with dagger on P.W.4, Mukesh Hargovanbhai, on his abdominal part. As noted earlier, as per the oral testimony of P.W.6, Dr. Surendra Mahendrakumar Sharma, and the injury certificate, Exh.41, P.W.2, Hargovan Haribhai, had sustained grievous injuries due to infliction of dagger blow by the appellant No.2. P.W.4, Mukesh Hargovanbhai, was also treated at the Civil Hospital, Ahmedabad, for the stab injury sustained by him. The injury certificate produced at Exh.40 of P.W.4, Mukesh Hargovanbhai, shows that he had sustained stab wound of about 1.5 cm x 0.5 cm at right opigastric region (transverse). The evidence of P.W.6, Dr. Surendra Mahendrakumar Sharma, who treated P.W.4, Mukesh Hargovanbhai, at the Civil Hospital, Ahmedabad, shows that the injury of stab wound was possible by a blow inflicted with dagger. He deposed that the injury found on P.W.4, Mukesh Hargovanbhai, was of serious nature. The oral testimony of P.W.2, Hargovan Haribhai, and P.W.4, Mukesh Hargovanbhai, coupled with oral testimony of P.W.6, Dr. Surendra Mahendrakumar Sharma, and injury certificates Exh.40 and Exh.41, prove beyond doubt that the appellant No.2, Ashokbhai Chhaganbhai, had inflicted blows with dagger on P.W.2, Hargovan Haribhai, and P.W.4, Mukesh Hargovanbhai. As per the expert evidence of P.W.6, Dr. Surendra Mahendrakumar Sharma, the stab-wound injuries sustained by P.W.2, Hargovan Haribhai, and P.W.4, Mukesh Hargovanbhai, were of serious nature. Therefore, the appellant No.2, Ashokbhai Chhaganbhai, should be held guilty for offence under Section 307 of the Indian Penal Code. The conviction of appellant No.2 under Sections 147, 148, 302 read with 149, 307 read with 149, 326 read with 149 and 323 read with 149 of the Indian Penal Code is, therefore, quashed and set aside, and, instead, the appellant No.2 is convicted under Section 307 of the Indian Penal Code.

18. As noted earlier, the appellant No.3, Pankaj alias Prakashbhai Chhaganbhai, had inflicted gupti blow on deceased Ashok Hargovanbhai with knowledge and intention to cause his murder. The appellant No.3 had acted cruelly and had selected vital part of the body of deceased Ashok Hargovanbhai for inflicting fatal blow

with gupti. The medical evidence of P.W.3, Dr. Nayak, and the post-mortem reports Exh.34 also show that the injury inflicted by the appellant No.3 on deceased Ashok Hargovanbhai by means of gupti was sufficient in the ordinary course of nature to cause his death. Therefore, we are of the opinion that the appellant No.3 should be held guilty for committing offence under Section 302 IPC.

19. As per the evidence of P.W.1, Lavjibhai Haribhai, P.W.2, Hargovan Haribhai, and P.W.4, Mukesh Hargovanbhai, the appellant No.4, Bhikhabhai Amrabhai, had inflicted axe blow with blunt portion on the thigh portion of P.W.1, Lavjibhai Haribhai. P.W.1, Lavjibhai Haribhai, was treated for the injuries sustained by him in the General Hospital, Patan. P.W.1, Lavjibhai Haribhai, was examined by P.W.3, Dr. Nayak, on October 21, 1992. He deposed that the injuries, as noted in his certificate Exh.33 found on the body of P.W.1, Lavjibhai Haribhai, can be caused by blunt portion of muddamal axe. As per the evidence of P.W.3, Dr. Nayak, and the certificate issued by him at Exh.33, with respect to the injuries sustained by P.W.1, Lavjibhai Haribhai, the injuries can be called serious in nature which can be cured within 15 days if no complication could occur. It may be noted that P.W.1, Lavjibhai Haribhai, was not referred to the Civil Hospital, Ahmedabad, as P.W.3, Dr. Nayak, was of the opinion that the patient had sustained grievous hurt and it was not a case of serious nature which cannot be treated at the General Hospital, Patan. In view of the nature of the injuries sustained by P.W.1, Lavjibhai Haribhai, due to infliction of blow with blunt portion of muddamal axe by the appellant No.4, Bhikhabhai Amrabhai, he should be held guilty of committing offence punishable under Section 326 of the Indian Penal Code. Therefore, the appellant No.4 is convicted under Section 326 of the Indian Penal Code for his individual act for causing injuries to P.W.1, Lavjibhai Haribhai, by inflicting blow with blunt portion of muddamal axe. The conviction of appellant No.4 under Sections 147, 148, 302 read with 149, 307 read with 149, 326 read with 149 and 323 read with 149 of the Indian Penal Code is, therefore, quashed and set aside, and, instead, the appellant No.4 is convicted under Section 326 of the Indian Penal Code.

20. According to the evidence P.W.1, Lavjibhai Haribhai, P.W.2, Hargovan Haribhai, and P.W.4, Mukesh Hargovanbhai, the appellant No.5, Mohanbhai Madhabhai, had inflicted stick blow on the head of deceased Ashok Hargovanbhai. From the post-mortem notes of deceased Ashok Hargovanbhai, Exh.34, it is not revealed that the deceased had sustained injury on the head by infliction

of blow with a stick. The evidence of the witnesses, as stated above, does not inspire confidence that the appellant No.5 had inflicted blow with stick on the head of deceased Ashok Hargovanbhai. The learned Additional Sessions Judge has convicted the appellant No.5, original accused No.8, for causing injuries on the head of deceased Ashok Hargovanbhai with the aid of Section 149 read with Section 302 of the Indian Penal Code. As noted earlier, the prosecution has failed to prove that there was common object on the part of the appellants to cause murder of deceased Ashok Hargovanbhai or they had common object of causing injuries on other injured witnesses. In view of the inconsistent evidence as compared to the medical evidence, we are of the view that the prosecution has not proved beyond reasonable doubt that the appellant No.5 had caused head injuries by means of stick, which he was carrying, on the head of deceased Ashok Hargovanbhai and the appellant No.5 deserves to be acquitted by giving reasonable benefit of doubt.

21. As a result of foregoing discussion, the appeal is partly allowed. The conviction of the appellants recorded by the learned Additional Sessions Judge under Sections 147, 148, 302 read with 149, 307 read with 149, 326 read with 149 and 323 read with 149 of the Indian Penal Code is quashed and set aside and, consequently, the sentence imposed on each of the appellants, namely (1) R.I. for six months; (2) R.I. for six months; (3) imprisonment for life (4) R.I. for five years and fine of Rs.200 for each of the appellants in default S.I. for one month, (5) R.I. for three years and fine of Rs.200 for each of the appellants in default S.I. for one month, and (6) S.I. for one year, is quashed and set aside, and, instead,

(i) the appellant No.1, Vankar Chhaganbhai Dhulabhai, is convicted under Section 326 of the Indian Penal Code and sentenced to undergo R.I for three years and fine of Rs.1000 in default R.I. for three months;

(ii) the appellant No.2, Vankar Ashokbhai Chhaganbhai, is convicted under Section 307 of the Indian Penal Code and sentenced to undergo R.I for five years and fine of Rs.1000 in default R.I. for three months;

(iii) the appellant No.3, Vankar Pankaj @ Prakashbhai Chhaganbhai, is convicted under Section 302 of the Indian Penal Code and sentenced to undergo R.I for life and fine of Rs.500 in default R.I. for three months;

(iv) the appellant No.4, Vankar Bhikhabhai Amrabhai, is convicted under Section 326 of t he Indian Penal Code and sentenced to undergo R.I for three years and fine of Rs.1000 in default R.I. for three months;

and

(v) the appellant No.5, Vankar Mohanbhai Madhabhai, is acquitted of all the charges framed against him by giving reasonable benefit of doubt.

The muddamal be disposed of in terms of directions given by the learned Additional Sessions Judge.

(M.H.KADRI, J)

(SHARAD D DAVE, J)

srilatha